

SESSION OF 2004

SUPPLEMENTAL NOTE ON SENATE BILL NO. 509

As Amended by Senate Committee on
Financial Institutions and Insurance

Brief*

SB 509, as amended, enacts a new Kansas Credit Services Organization Act and repeals existing statutes. Among other terms, the bill defines:

- ! "Credit services organization" as a person who engages in, or holds out to the public as willing to engage in, the business of debt management services for a fee, compensation or gain, or in the expectation of a fee, compensation or gain; and
- ! "Debt management service" as receiving or offering to receive funds from a consumer for the purpose of distributing the funds among such consumer's creditors in full or partial payment of the consumer's debt; improving or offering to improve a consumer's credit record, history or rating; or negotiating or offering to negotiate to defer or reduce a consumer's obligations with respect to credit extended by others.

Before any person may engage in the business of a credit services organization, the person must be registered with the State Bank Commissioner on forms prescribed by the Commissioner. The applicant also must provide a surety bond in the amount of \$25,000; however, the amount of the bond may be increased up to \$1 million as further defined by rules and regulations of the Commissioner. The Commissioner may deny, suspend, revoke, or refuse to renew a registration issued pursuant to the act.

The bill requires any credit services organization engaging in debt management to provide to the consumer credit education, a financial analysis of and initial budget plan for all of the consumer's debt

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

obligations which indicates the consumer can reasonably meet the requirements set in the budget, and provide to the consumer a list of creditors who have agreed to participate in the plan and those not participating. The written debt management agreement entered into must be signed and provided to the consumer and include the many disclosures contained in the bill. The registrant may charge fees as allowed in the bill, including a one-time consultation fee and a monthly maintenance fee. If a registrant imposes any fee or charge not authorized, the debt management services agreement is void and the registrant must refund the amount of the unauthorized fees and charges.

Prohibited acts under the bill include delaying payment of a consumer's debt for purposes of increasing interest, costs, fees, or charges payable by the consumer; making misleading representations, e.g., guaranteeing to "erase bad credit"; making false promises or engaging in fraudulent or deceptive practices; lending money or providing credit to a consumer; structuring debt management services in a manner that would result in negative amortization; or attempting to cause a consumer to waive or agree to forego rights or benefits under this act.

Funds paid to a registrant must be placed in a trust account established for the benefit of the consumer within four days of receipt of the funds, and trust account funds of the consumer are not to be commingled with any operating accounts of the registrant. The consumer must receive a report once every three months regarding the condition of the account. And, annually, the registrant must file a report with the Bank Commissioner relating to credit services organization business conducted by the registrant during the preceding calendar year.

The Kansas Credit Services Organization Act is administered by the Bank Commissioner. The Commissioner, Attorney General, district or county attorneys, or a consumer may bring an action in court to enjoin any violation of the act or rules and regulations promulgated under the act. Any person violating the act shall be guilty of a class B nonperson misdemeanor and, also, is guilty of a deceptive act or practice under the Kansas Consumer Protection Act. Any remedy provided in this act shall be construed to be in addition to any other remedy provided by the Kansas Consumer Protection Act. A consumer injured by a violation of the act may bring an action for recovery of

damages.

Finally, the bill amends two other statutes to reconcile them with the provision of this act.

Senate Committee amendments were technical and clarifying.

Background

SB 509 was requested by the Bank Commissioner whose Deputy Commissioner explained that, in combination with increasing levels of consumer debt, there has been a proliferation of companies and organizations purporting to help consumers get out of debt. The bill is intended to update and expand the protections contained in our present credit services organization law to better address and reduce or prevent potential problems reflective of how these programs are marketed.

The bill is supported by the Consumer Credit Counseling Service of Salina/Wichita Kansas and the Housing and Credit Counseling, Inc., of Topeka, Lawrence, Manhattan, and Emporia.

The fiscal note prepared by the Division of the Budget indicates that passage of the bill will allow the Bank Commissioner to charge registration fees to these businesses; however, the fiscal effect of SB 509 cannot be estimated with any accuracy since the number of these businesses operating in the state is unknown. Also unknown is the number of businesses that might violate the new law and incur a fine.